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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,799	07/23/2003	Richard Douglas Schultz	050337-1600 (06CXT0023WL)	9023
7590 07/13/2007 Scott A. Horstemeyer, Esq. THOMAS, KAYDEN, HORSTEMEYER & RISLEY, L.L.P. 100 Galleria Parkway, Suite 1750 Atlanta, GA 30339			EXAMINER BATES, KEVIN T	
			ART UNIT 2155	PAPER NUMBER
			MAIL DATE 07/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/625,799

Applicant(s)

SCHULTZ ET AL.

Examiner

Kevin Bates

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Response to Amendment

This Office Action is in response to a communication made on June 26, 2007.

Claims 9 – 14 have been cancelled.

Claims 1 – 8 are currently pending in this application.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims contains the limitation “wherein the transmitter signaling is done through a power save mode.” It is unclear how one can transmit through a power save mode. It seem to imply that it means that the signaling was performed while in a power save mode, but the wording of the claim is not clear and must be explained or amended.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Uemura (6430161).

Regarding claim 1, Uemura teaches a method for reducing CPU loading in a software receiver for a packet based communications system comprising the steps of:

- measuring the current CPU load (Column 6, lines 20 – 23);
- determining that the CPU load has exceeded a predetermined threshold (Column 8, lines 38 – 55; where the threshold is calculated with the CPU load and network load together to determine if the data amount is too large based on the amount of data that can be sent to the terminal based on the information in the table);
- signaling the communications system transmitter transmission to inhibit packet predetermined when the threshold is exceeded (Column 7, line 66 – Column 17, where the CPU load and network load are sent to the server and the server determines if the threshold is exceeded, if it is the quality of the data sent is inhibited and the server thins the requested data to an inhibited point);
- monitoring the CPU load while the transmitter is inhibited (Column 9, lines 3 – 9);
- determining that the CPU load has fallen below a threshold (Column 8, lines 38 – 55); and
- signaling the communications system transmitter to begin transmitting packets once the CPU load has fallen below the predetermined threshold (Column 8, lines 38 – 55, where when the CPU load and network load improved the profile allows must more data to be sent along the connection).

Regarding claim 2, Uemura teaches a method as in claim 1, wherein the measurement of CPU loading is made by an operating system background task (Column 4, lines 22 – 27).

Regarding claim 5, Uemura teaches a method as in claim 1, in which the communications system is wireless (Column 3, lines 29 – 30).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uemura.

Regarding claims 6, 7, and 8, Uemura discloses that the communications system is wireless.

Uemura does not explicitly indicate that the communications system can be IEEE 802.11 wireless local area network (WLAN), Bluetooth, or IEEE 802.15 wireless personal area network (PAN).

Examiner takes Official Notice (see MPEP § 2144.03) that "adding support for IEEE 802.11 wireless local area network (WLAN), Bluetooth, or IEEE 802.15 wireless personal area network (PAN) would be obvious because Uemura's system is meant to be used within any wireless communication system". The Applicant is entitled to traverse any/all official notice taken in this action according to MPEP § 2144.03,

namely, "if applicant traverses such an assertion, the examiner should cite a reference in support of his or her position". However, MPEP § 2144.03 further states "See also *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)."

Specifically, *In re Boon*, 169 USPQ 231, 234 states "as we held in *Ahlert*, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Uemura in view of Sherman (6434513).

Regarding claim 3, Uemura teaches a method as in claim 1.

Uemura does not explicitly indicate wherein the CPU load measurement is based on the response time of the host CPU to a request for interrupt.

Sherman teaches that CPU load can be measured in relation to measuring the response time of a request to the CPU (Column 1, lines 20 – 27).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Sherman's teaching in Uemura to determine the CPU load

based on request response time in order to determine the load in terms of actual real world application response time.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Uemura in view of Beach (7126945).

Regarding claim 4, Uemura teaches a method as in claim 1.

Uemura does not explicitly indicate wherein the transmitter signaling is done through a power save mode.

Beach teaches a system that monitors the client to see if the client enters the power save mode, once in the power save mode the access point inhibits packet communication (Column 3, lines 42 – 60).

It would have been obvious to one of ordinary skill in the art at the time further adjust which and the amount of data being sent to the wireless terminal in Uemura's system based on the additional factor of power save mode to only send data to the terminal that must be sent while the CPU is trying to save power.

Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U. S. Patent No. 6577871 issued to Budka, because it teaches the idea of inhibiting packet communication based on a predetermined threshold.

U. S. Patent No. 6917598 issued to Emeott, because it teaches using lower power modes to inhibit packets.

Remarks

In an effort to speed up prosecution, it is recommended that using the power save mode signal to the server as the signal to inhibit the packets would overcome the prior art on record and move this application closer to allowability.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Bates whose telephone number is (571) 272-3980. The examiner can normally be reached on 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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July 7, 2007